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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

FLUMGIO TECHNOLOGY, INC., a
California corporation;

Plaintiff,

vs.

MGM DISTRIBUTORS, INC., a
California corporation; RAJVINDER
MAHAY, an individual, and DOES 1
through 10, inclusive.

Defendants.

Case No. 2:22-cv-1135-KJM-JDP

**CONSENT ORDER AND
PERMANENT INJUNCTION**

This Consent Order and Permanent Injunction (“Consent Order”) is entered into by and between Plaintiff Flumgio Technology, Inc. (“Flumgio”) and defendants MGM Distributors, Inc. (“MGM”) and Rajvinder Mahay (“Mahay”) (collectively “Defendants”), subject to approval by the Court.

WHEREAS, Plaintiff Flumgio is the owner of the U.S. Trademark Registration No. 6,692,431 for the FLUM® trademark (the “Registered Trademark”) for use in connection with (among other things) electronic cigarette liquid, chemical

1 flavoring, liquid nicotine, and electronic cigarettes, listed in International Class 34;

2 **WHEREAS**, Flumgio imports, offers for sale, and sells its FLUM® branded
3 products in the United States, including products covered by its Registered
4 Trademark;

5 **WHEREAS**, Flumgio has accused defendant MGM of infringing the
6 Registered Trademark by selling certain counterfeit FLUM vaping products;

7 **WHEREAS**, on June 29, 2022, Flumgio commenced this action (the “Action”)
8 alleging claims for, *inter alia*, federal trademark infringement, federal unfair
9 competition and false advertising, common law trademark infringement unfair
10 competition under California Business and Professions Code § 17200 for
11 Defendants’ sale of counterfeit vaping products that infringe the Registered
12 Trademark;

13 **WHEREAS**, in an attempt to settle this matter amicably and to avoid the
14 expense and distraction of protracted litigation, Plaintiff and Defendants have agreed
15 to entry of this Consent Order;

16 **WHEREAS**, this Court, being fully advised in the premises, finds that there is
17 good cause for the entry of this Consent Order and that there is no just reason for
18 delay; and

19 **WHEREAS**, this Consent Order shall finally conclude and dispose of this
20 Action as to the parties to this Consent Order pursuant to Federal Rules of Civil
21 Procedure 54, 58, and 65, and this Consent Order shall be entitled to issue preclusion
22 and claim preclusion effect.

23 This Court therefore enters this Consent Order, together with all findings of
24 fact and conclusions of law herein, and final judgment providing for a permanent
25 injunction.

26 **IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

- 27 1. Defendants consent to entry of this Consent Order.

1 2. Defendants affirm that they have reviewed and agreed to this Consent
2 Order voluntarily, and that no promise or threat of any kind has been made by
3 Flumgio, or any officer or employee of Flumgio, to induce it to consent to entry of
4 this Consent Order.

5 3. Defendants affirm that they were represented by legal counsel in
6 connection with the negotiation of this Consent Order.

7 4. Flumgio is the owner of all right, title, and interest in and to the
8 Registered Trademark.

9 5. MGM, and its officers, directors, shareholders, members, managers,
10 employees, agents, successors, assigns, representatives, affiliates, subsidiaries,
11 including Mahay, and all other persons and organizations in active concert or
12 participation with any of the foregoing, hereby acknowledge the validity and
13 enforceability of the Flumgio's rights in the Registered Trademark and Defendants'
14 infringement of the Registered Trademark.

15 6. MGM is a direct competitor to Flumgio and has purchased, sold, and/or
16 offered for sale in the United States the counterfeit FLUM vaping products that are
17 the subject of the complaint filed by Flumgio in this Action.

18 7. This Court has subject matter jurisdiction over the Action and this
19 Consent Order pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367.

20 8. Defendants admit that service of the summons and Complaint in this
21 Action was proper.

22 9. Defendants admit that this Court has personal jurisdiction over them
23 with respect to the Action and this Consent Order.

24 10. Defendants admit that venue for this Action properly lies with this
25 Court.

26 11. Defendants waive the entry of findings of fact and conclusions of law in
27 this Action pursuant to Rule 52 of the Federal Rules of Civil Procedure, except as to
28

1 the facts recited and/or stipulated to in this Consent Order.

2 12. Defendants consent to the continued jurisdiction of this Court for the
3 purpose of enforcing the terms and conditions of this Consent Order and the
4 settlement agreement, which has been filed together with this Consent Order, and for
5 any other purposes relevant to this Action.

6 13. MGM represents that:

- 7 a) Mahay is the only principal and/or member having an ownership
8 interest in, and/or [who] can control, MGM at the time this Consent
9 Order was stipulated to;
- 10 b) MGM currently has zero (0) units of accused counterfeit FLUM
11 vaping products;
- 12 c) MGM does not have any accused counterfeit FLUM vaping products
13 currently in its possession custody or control;
- 14 d) No new counterfeit FLUM vaping products are being purchased by
15 MGM;
- 16 e) No counterfeit FLUM vaping products will be shipped, or are
17 currently being shipped, to MGM;
- 18 f) MGM has ceased all use of the Registered Trademark.

19 14. Notwithstanding the waiver in Paragraph 11 herein, The parties agree
20 Flumgio has suffered and/or continues to suffer irreparable injury to its business, its
21 FLUM® trademark, and their respective goodwill, from Defendants' directly
22 competitive sales of the counterfeit FLUM vaping products. Flumgio will suffer
23 further irreparable injury in the future, should Defendants' conduct not be enjoined
24 as set forth in this Consent Order, as Defendants could at any time recommence with
25 its infringing activity. Accordingly, monetary damages alone are inadequate to
26 remedy this injury.

27 15. Considering the balance of hardships, an injunction is warranted.
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1 Flumgio has an exclusive right to exclude granted by its right to protect the reputation
2 and goodwill of its FLUM® trademark and FLUM® branded products. MGM also
3 offers non-infringing alternative products. As such, the burden on MGM is
4 diminished, and not outweighed by Flumgio's rights to protect its intellectual
5 property and goodwill.

6 16. The Court finds that the public interest would not be disserved by a
7 permanent injunction, as Flumgio continues to offer its FLUM® branded, MGM
8 intends to offer non-infringing alternative products, and the products are not related
9 to, nor impact, public health and safety.

10 17. In light of the foregoing, the Court holds that the entry of the permanent
11 injunction in this Consent Order is appropriate.

12 18. Effective as of the date this Consent Order is entered by the Court,
13 Defendants, their officers, directors, shareholders, members, managers, employees,
14 agents, successors, assigns, representatives, affiliates, subsidiaries, and all other
15 persons and organizations in active concert or participation with any of the foregoing,
16 are permanently enjoined and restrained from engaging in any sale of any counterfeit
17 products bearing the FLUM® brand and/or mark.

18 19. Defendants expressly recognize and acknowledge that a violation or
19 breach by them of any of the injunctions, requirements, representations, covenants,
20 conditions, agreements, or undertakings in this Consent Order will cause Flumgio
21 irreparable harm which cannot be adequately calculated or remedied solely in money
22 damages in an action at law, thereby entitling Flumgio to immediate injunctive relief
23 and an order compelling performance, in addition to any other remedy to which
24 Flumgio may be entitled at law, including a finding of contempt for violation of this
25 Consent Order, and to an award of Flumgio's reasonable attorneys' fees and costs
26 incurred in enforcing this Consent Order, together with pre-judgment and post-
27 judgment interest on any money damages awarded to or collected by Flumgio.

1 20. Defendants shall comply with the terms of the parties' settlement
2 agreement which is filed herewith this Consent Order. *See* ECF No. 40.

3 21. The Parties shall bear their own costs, expenses, and attorneys' fees as
4 they relate to this Action, except for the costs, expenses, and attorneys' fees provided
5 for in Paragraph 5.5 of the settlement agreement, ECF No. 40, if they become
6 applicable and are incurred by Flumgio in connection with its enforcement of this
7 Consent Order and/or the parties' settlement agreement.

8 22. This Consent Order constitutes a final judgment concerning the subject
9 matter of this Action.

10 23. Defendants waive any right to appeal from this Consent Order.

11 24. This Court shall retain continuing jurisdiction over the persons and
12 entities identified in this Consent Order and over the subject matter of this Consent
13 Order, Flumgio's complaint, and the parties' settlement agreement to ensure
14 compliance and performance with the terms of this Consent Order and to modify the
15 Consent Order as justice so requires.

1 IT IS SO STIPULATED AND CONSENTED TO:

2 Dated: July __, 2023

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4 By: /s/
David Yu, Esq. (SBN 276471)
ARDENT LAW GROUP, P.C.

5
6 Attorneys for Plaintiff
FLUMGIO TECHNOLOGY, INC.

7
8 /s/
Christopher J. Fry, Esq. (SBN 298874)
9 FRY LAW CORPORATION

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11 Attorneys for Defendant MGM
DISTRIBUTOR, INC.

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13
14 ORDER

15 With minor modifications, the court approves the parties' consent order and
16 permanent injunction.

17 IT IS SO ORDERED:

18 DATED: August 9, 2023.

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21 CHIEF UNITED STATES DISTRICT JUDGE
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